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**Declaration of Gregory M. Fox**  
**EXHIBIT A ( 23 pages from Massey Depo)**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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COPY

SRI LOUISE COLES, et al., )  
Plaintiffs, )  
-vs- )  
CITY OF OAKLAND, a Municipal )  
entity, et al., )  
Defendants. )

No. CO3-2961 TEH (JL)  
CO3-2962 TEH (JL)

and related cross-action.

DEPOSITION OF LAWRENCE LEE MASSEY

Wednesday, April 13, 2005

REPORTED BY: BRIAN DEZZANI, CSR #4572

LUSK & SNYDER  
COURT REPORTERS  
760 MARKET STREET, SUITE 326  
SAN FRANCISCO, 94102  
(415) 362-5991

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 A. Corrections.

2 Q. Went to work for the Department of

3 Corrections?

4 A. Yes. November of '95.

5 Q. Have you worked that job continuously?

6 A. Yes.

7 Q. Up until the present?

8 A. Yes. On a part-time basis.

9 Q. What's your job title?

10 A. Corrections officer. Permanent intermittent  
11 employee.

12 Q. A permanent intermittent employee?

13 A. Employee.

14 MR. NISENBAUM: I think there's a  
15 contradiction of sorts.

16 THE WITNESS: Well --

17 MR. FOX: Q. Sounds like the State Personnel  
18 Board, so -- are you a member of the union?

19 A. Yes.

20 Q. Correctional officers?

21 A. Yes.

22 Q. And have you been assigned to one facility  
23 since joining the Department of Corrections?

24 A. Yes.

25 Q. Where's that?

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 Q. Okay.

2 A. So if this is the gate, then I would say right  
3 about there, (indicating).

4 Q. All right. So we'll do a one and a circle and  
5 that's where you parked?

6 A. Yes.

7 Q. Did you park in a legal parking area or was it  
8 a no parking area?

9 A. I think it was legal.

10 Q. Were there other cars parked there?

11 A. I don't really recall. I think -- eventually  
12 there were.

13 Q. Okay. What kind of car were you driving?

14 A. I had a -- my '97 GMC Yukon.

15 Q. Is that a truck?

16 A. Yes.

17 Q. Color?

18 A. Maroon.

19 Q. So how were you dressed as you got out of your  
20 vehicle?

21 A. Probably that sweat shirt or something that  
22 you seen in the picture.

23 I'm not in coveralls. I'll put it like that.  
24 Probably something similar to that.

25 Q. As you look at Exhibit 752, the first page, do

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 shirt probably and jeans. Where do you go?

2 A. I kind of ventured over to where the activity  
3 was, asking some questions and then seen most of the  
4 other longshoremen gathered in the middle of Middle  
5 Harbor Road and I started talking with them.

6 Q. When you went over and saw the protesters, did  
7 you talk to the protesters?

8 A. No.

9 Q. Did you talk to anybody?

10 A. If any, it would be another longshoreman.

11 Q. Did you go up and -- was there any reason why  
12 you didn't walk through the crowd and go up to the SSA  
13 gate and tell them you were there?

14 A. Yes.

15 Q. Why was that?

16 A. Because I seen a clerk who tried to go through  
17 the gate and force his way through the gate, and what  
18 happened with his car.

19 Q. What happened to his car?

20 A. It might have got kicked and hit, that type of  
21 thing.

22 Q. Okay. I don't want you to guess. If you saw  
23 this, it's important for me to know what happened so --

24 A. Well, it was kicked and hit, but I also could  
25 see why. I mean, he came in and he forcefully drove in.

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

•1        Q.        This was a clerk working for the union or  
•2        working for SSA? •

•3        A.        For SSA.

•4        MR. NISENBAUM:    This is where they're  
•5        protesters gathered in front of the fence?

•6        THE WITNESS:    In front of the fence.

•7        MR. FOX: Q.    So this guy literally tried to  
•8        drive through the protesters and get through the gate?

•9        A.        Right.

•10       Q.        The crowd did not part for him, instead there  
•11       were people banging on the car kicking on the car.

•12       A.        They kind of parted and tried to force his way  
•13       in at his face.    So you kind of bump some people.

•14       Q.        Did he eventually drive through?

•15       A.        Yes.

•16       Q.        But when you observed this, you thought what  
•17       about you trying to get into the gate?

•18       A.        Well, I wasn't going to go in the gate.

•19       Q.        Okay.    Was it your impression that the people  
•20       were protesting were blocking access to the gate?

•21       A.        Yes.

•22       Q.        So rather than create a confrontation or  
•23       physically have to deal with these people you saw other  
•24       longshoremen standing on Middle Harbor?

•25       A.        Yes.

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 Q. And this included Billy Kepo'o?

2 A. Billy Kepo'o was there mainly. Brian Moore,  
3 and some of the others.

4 Q. Okay. Now, was everybody dressed similarly in  
5 terms of jeans, sweat shirts, jackets, sweaters?

6 A. I can't really say.

7 Q. Okay. What did you guys discuss in terms of  
8 going to work that day, given what was happening in  
9 front of the east SSA gates?

10 A. We're not going to go in, that's kind of like  
11 standard procedure. If you have some type of blockage  
12 or labor dispute, you don't try to go in.

13 Q. Okay. Had that happened to you before where  
14 there had been a lockage or a labor dispute and there  
15 was some understood procedure as to what was to be done?

16 A. I can't say it has happened before, but it's  
17 just maybe unwritten law or understanding.

18 Q. Okay. Did you understand this was a labor  
19 dispute going on?

20 A. No. No.

21 Q. What was the message, if anything, that these  
22 people were trying to communicate or do that you  
23 understood?

24 A. It's a protest SSA or protests against SSA for  
25 shipping or moving the war material to Iraq.

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1       Q.     Okay. How did you come to that conclusion  
2     that this is what these people were about?

3       A.     They had signs.

4       Q.     As you guys talked, was there any attempt on  
5     the part of you and your coworkers to communicate with  
6     the union as to what we should do?

7       A.     I believe maybe more with my coworkers, but --

8       Q.     Well, in the event of a picket or a protest in  
9     front of the gate, was it understood that you guys were  
10    supposed to contact someone, wait for someone to come?

11      A.     At least wait for someone to -- official to  
12    let us know what we are to do.

13      Q.     And was any attempt made to communicate with  
14    some official to find out what you guys were supposed to  
15    do?

16      A.     I believe there was an attempt that was made.

17      Q.     Tell me what happened.

18      A.     As far as I know, it's just from a kind of  
19    hearing among the guys that I think either the president  
20    was coming out, the BA or someone was coming.

21      Q.     The?

22      A.     The BA.

23      Q.     The business agent?

24      A.     Yes.

25      Q.     Was that Jack Heyman?



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1 A. Jack was a BA, but I don't know if he was the  
2 BA for that day.

3 Q. Was there someone else that was supposed to be  
4 coming, as far as you understood it?

5 A. No. I think just the BA.

6 Q. Was there some kind of a plan?

7 Well, you guys are sitting there. You're  
8 supposed to be at work at 7:30. The gate is blocked, so  
9 what did you guys decide to do?

10 A. Wait.

11 Q. For what?

12 A. For an official to let us know what to do.

13 Q. Or for the --

14 A. For the gate to be cleared.

15 Q. Okay. Cleared by whom?

16 A. Whoever. Just by them leaving.

17 Q. Okay. So basically, you guys just stood there  
18 on Middle Harbor waiting for whatever was going to  
19 happen, to happen regarding the gate, the protesters or  
20 an official coming to see you guys?

21 A. Yeah.

22 Q. Now, where -- where were you standing on  
23 Middle Harbor? Were you standing on some area where it  
24 was lawful for you guys to stand?

25 A. I don't know what lawful would be.

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1       Q.     Well, for example, are you allowed to stand on  
2     the street?

3       A.     Well, in that case, I would say yes.

4       Q.     Why is that?

5       A.     Because there was essentially no where else to  
6     be.

7       Q.     Okay. Okay.

8       A.     If we're trying to go to work.

9       Q.     What about across the street, what was on the  
10    other side of Middle Harbor Drive?

11      A.     A rail spur.

12      Q.     Okay.

13      A.     That's it.

14      Q.     Any reason why you guys decided to stand in  
15    the middle of Middle Harbor Drive as opposed to walking  
16    over to the other side of the road opposite the SSA  
17    gate?

18      A.     Yes, there was vehicles there.

19      Q.     There was vehicles there?

20      A.     Yes.

21      Q.     What kind of vehicles?

22      A.     Personal vehicles.

23      Q.     There were vehicles parked on Middle Harbor?

24      A.     Well, I wasn't parked, but most of the other  
25    longshoremen were parked in the turning lane --

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1       Q.     Okay.

2       A.     -- of Middle Harbor.

3       Q.     Okay. Is it lawful to park in a turning lane,  
4 as you understood it?

5       A.     In that particular instance, yes, because  
6 there was the no where else to park, yeah.

7       Q.     Was there truck traffic on Middle Harbor while  
8 you guys were standing out there?

9       A.     I don't recall.

10      Q.     Is there generally truck traffic on Middle  
11 Harbor?

12      A.     Yes.

13      Q.     What happened to the trucks that morning, if  
14 you were able to --

15             MR. NISENBAUM: If you know?

16             MR. FOX: Q. Able to observe.

17      A.     I don't know.

18      Q.     So the trucks weren't driving up and down  
19 trying to pull in the gates?

20      A.     I don't think so.

21      Q.     Okay.

22      A.     But see, remember they don't pull into that  
23 gate anyway.

24      Q.     Okay. Were you able to see what was happening  
25 at the west SSA gate?

1 police might be doing in terms of opening up the gate,  
2 dealing with the protesters or anything like that?

3 A. I don't recall.

4 Q. Okay. At some point in time do you see the

5 people from the west APL gate coming towards your

6 location at the east SSA gate?

7 A. Some, yes.

8 Q. What do you see? Tell me what you see.

9 A. Just some that there was movement toward --

10 toward the way -- towards us.

11 Q. Okay. So you're standing in the middle of

12 Middle Harbor; correct?

13 A. Yes.

14 Q. You've got people in front of the east SSA

15 gate, protesters?

16 A. Yes.

17 Q. And you see people coming towards you from the

18 west APL gate?

19 A. Yes.

20 Q. Do they appear to be protesters as well?

21 A. Yeah.

22 Q. Are you able to tell why it is they're coming

23 towards you? What's happening?

24 A. Not at first, no.

25 Q. What do you see eventually?

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1       A.     Eventually I seen the police and them  
2     developing a skirmish line.

3       Q.     Is that something you had trained to do as a  
4     member of the Department of Corrections?

5       A.     Yes.

6       Q.     When you had trained as a member of the  
7     Department of Corrections, why were you skirmish -- why  
8     are skirmish lines used by the Department of  
9     Corrections?

10      A.     It is a way to either stop, control or move  
11     inmates from areas that you want them to move.

12      Q.     And the Department --

13      A.     Riots. Riots.

14      Q.     And the Department of Corrections when you  
15     guys train on using skirmish lines, are you training  
16     using helmets?

17      A.     Some do put on helmets, yes.

18      Q.     Carry batons, impact weapons?

19      A.     Yes.

20      Q.     And in the Department of Corrections when you  
21     guys have trained on skirmish lines, have there been  
22     training about using less lethal to move inmates?

23      A.     Yes.

24      Q.     And you guys tried to use less lethal on  
25     inmates who're not armed?

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1 A. I believe so, yeah.

2 Q. Okay. If you got inmates who're rioting, one

3 of the techniques is to move them using less lethal;

4 correct?

5 A. Correct.

6 Q. Now, when you saw this police skirmish line

7 forming up, did you have an understanding that the

8 Oakland police were beginning to do some kind of crowd

9 control?

10 A. Yes.

11 Q. That they were attempting to move the

12 demonstrators?

13 A. Yes.

14 Q. Okay. And the demonstrators were, in fact,

15 moving?

16 A. Yes.

17 Q. As the demonstrators came towards you, did

18 they begin to congregate in Middle Harbor Drive?

19 A. I wouldn't say congregate, just move down.

20 Q. Okay. Did they eventually locate themselves

21 where you were standing?

22 A. You mean like just standing there.

23 Q. Yeah, stop and congregate in a big crowd?

24 A. No. No.

25 Q. You don't remember any crowd of demonstrators

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 forming around you where you were standing with your  
2 coworkers?

3 A. No. What I recall is mainly being over to the  
4 side of this.

5 Q. Did you see eventually the Oakland police  
6 approaching you in a skirmish line?

7 A. Yes.

8 Q. Was there a line who have motorcycles?

9 A. Yes.

10 Q. Was there a line of officers on foot?

11 A. Yes.

12 Q. Did those two lines come to a stop some  
13 distance east of you?

14 A. Yes.

15 Q. And when that occurred, did you see the police  
16 bring some vehicles up behind the skirmish line?

17 A. If it was vehicles, it would just be  
18 motorcycles.

19 Q. Did you hear any public announcements of a  
20 dispersal order from the Oakland police lines?

21 A. What I remember is for them, the protesters,  
22 to remove themselves from the gate. That's about it.

23 Q. All right. So you heard some kind of  
24 announcement or --

25 A. M-hmm.

1       Q.     -- order being given which you understood was  
2     telling the protesters to move from out of the east SSA  
3     gate?

4       A.     Yes. Yes.

5       Q.     What did the protesters do in response?

6       A.     They lingered for a couple of seconds, but  
7     they began to move.

8       Q.     Okay. Did they move to where you were  
9     standing?

10      A.     They moved some crossed us.

11      Q.     Okay.

12      A.     But the majority of us kept walking down like  
13     the fence line going --

14      Q.     The protesters?

15      A.     Yes.

16      Q.     Did there come a point in time when you were  
17     standing by yourself with the -- by yourself with the  
18     protesters in between the protesters and the Oakland  
19     Police Department?

20      A.     Can you say that again?

21      Q.     Did there come a point when you were standing  
22     in the middle of Middle Harbor in between the police  
23     line and the protesters?

24      A.     I would assume so, yeah.

25      Q.     Okay. You were standing there because you



DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 were waiting for the gate to be cleared for you to go to  
2 work?

3 A. Correct.

4 Q. All right. And --

5 A. And that's when they start to clear, the  
6 longshoremen on the other side was allowed to drive in.

7 Q. The longshoremen who were on the other side of  
8 where?

9 A. There's -- this other east gate is like an  
10 intersection.

11 Q. Right.

12 A. And so on the other side of the intersection  
13 you had longshoremen parked in the turn lane over on  
14 that side.

15 Q. So there were cars that were --

16 A. Facing us.

17 Q. -- pointing westbound?

18 A. Yes.

19 Q. And as the gate cleared, those cars began to  
20 drive into the gate?

21 A. They were able to, yes. Yes.

22 Q. And park?

23 A. The police kind of helped push them along.

24 Q. So after they pulled into the gate, what  
25 happened?

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 A. We were shot.

2 Q. Okay. So let me see if I understand this  
3 sequence, okay?

4 A. Okay.

5 Q. You're standing in the middle of Middle Harbor  
6 --

7 A. M-hmm.

8 Q. -- with your co-workers?

9 A. M-hmm.

10 Q. You have to say yes.

11 A. Yes.

12 Q. There's a group of protesters in front of the  
13 east SSA gate?

14 A. Yes.

15 Q. Protesters from the west APL gate join those  
16 people?

17 A. Yes.

18 Q. Okay. A line of police begin to approach and  
19 come to a stop on the east side of the SSA gate?

20 A. Yes.

21 Q. Line of motorcycles?

22 A. Motorcycles and men.

23 Q. On foot?

24 A. Yes.

25 Q. You hear some kind of an order given to the

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 protesters to get out of the way of the east SSA gate?

2 A. Yes.

3 Q. What can you tell me what you actually heard?

4 A. No.

5 Q. Were there protesters standing around you in  
6 the middle of Middle Harbor when that order was given?

7 A. Probably a few.

8 MR. NISENBAUM: As far as you mean by around,  
9 are you referring --

10 MR. FOX: Q. Were they standing in the middle  
11 of Middle Harbor Road?

12 A. They were standing pretty much everywhere. I  
13 mean, the majority was over to the side of us.

14 Q. Okay. In front of the east SSA gate?

15 A. Yes, and along the fence line.

16 Q. But there were also protesters standing in  
17 Middle Harbor, in affect, right all around you?

18 A. Yes.

19 Q. When the order was given to get out of the  
20 vicinity of the east SSA gate, did you have any  
21 understanding that it also applied to the protesters  
22 standing in the middle of Middle Harbor Drive?

23 A. No.

24 Q. Did you have an understanding that it was  
25 lawful for the protesters to be standing in the middle

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 A. No.

2 Q. Did you look down and see what had struck you?

3 A. Not at that time.

4 Q. Okay. You took cover?

5 A. Tried to take cover.

6 Q. Okay.

7 A. And then essentially I walked over towards the  
8 rail head, and they threw a grenade.

9 Q. Okay. So you went over to where the railroad  
10 tracks were?

11 A. Yeah.

12 Q. On the opposite side of the street?

13 A. Right.

14 Q. And then a grenade was thrown in your  
15 direction --

16 A. Yes.

17 Q. -- exploded?

18 A. Exploded behind me.

19 Q. And then what did you do?

20 A. I got even madder and kept telling them, I'm a  
21 worker.

22 Q. So you were actually facing them?

23 A. Yes.

24 Q. And saying "I'm a worker"?

25 A. Yeah.

DEPOSITION OF LAWRENCE LEE MASSEY, 4-13-05

1 Q. And what did they say or do?

2 A. One officer -- what did he do? He was -- he  
3 was kind of like forceful. Telling me to go, leave. I  
4 said, "I'm a worker and a correctional officer. Here's  
5 my badge."

6 Q. Okay. You showed him your ID?

7 A. Yes. And he still was trying to be forceful,  
8 and then one of the other partners -- and he said, "Let  
9 me look and let me through."

10 Q. So you were able to go through the skirmish  
11 line.

12 A. Yeah. I guess it was still a skirmish line at  
13 that time.

14 Q. The line?

15 A. Yeah.

16 Q. Let me ask you this: You were struck twice  
17 almost simultaneously in the back side?

18 A. Yes.

19 Q. As you then go from the center of Middle  
20 Harbor to the side of the road, did you see or detect  
21 anyone firing at you as you crossed the street?

22 A. No.

23 Q. As you crossed the street, did you hear  
24 continuing firing?

25 A. That, I don't recall.

1 Police Department?

2 A. No.

3 Q. Do you know anybody that works for Oakland --

4 A. No.

5 Q. Ever had prior contact with the Oakland  
6 police?

7 A. No.

8 Q. Any contact with them since?

9 A. No.

10 Q. Have you learned, except from your attorneys,  
11 anything about what happened that day between April 7th  
12 and today that in some respect explains what happened  
13 and why they did it?

14 A. No.

15 Q. Okay. I think I'm almost done, so give me a  
16 second to check my notes.

17 MR. NISENBAUM: I just have a couple of points  
18 of clarification.

19 MR. FOX: Sure, go ahead.

20 EXAMINATION BY MR. NISENBAUM

21 MR. NISENBAUM: Q. Was anybody in the group of  
22 longshoremen that you were standing with in the turn  
23 lane, was anybody wearing any kind of a peace activist  
24 t-shirt or protest activist t-shirt?

25 A. No.

1       Q.     Anyone carrying any signs?

2       A.     No.

3       Q.     Any pickets?

4       A.     Not that I recall.

5       Q.     Anybody marching in circles or chanting --

6       A.     No.

7       Q.     I understand you weren't wearing your formal  
8 or were you wearing your formal work clothes at that  
9 point?

10      A.     We really don't have any formal work clothes.

11      Q.     Okay. All right. When -- when protesters  
12 were being dispersed by police as you were still  
13 standing there, assuming that that's what happened, did  
14 they -- were their protesters who stopped next to you or  
15 next to your group in the middle of the road?

16      A.     I don't believe so, mainly just were walking.

17      Q.     Okay. So the protesters -- did the protesters  
18 continue moving at that time?

19      A.     As far as I recall.

20      Q.     All right. And you guys did not move, you and  
21 your --

22      A.     No.

23      Q.     Okay. Before the officers shot, did you hear  
24 any warning that there would be any firing?

25      A.     I don't recall. Only the warning for the

CERTIFICATE OF DEPOSITION OFFICER

I, BRIAN DEZZANI, CSR NO. 4572, duly  
authorized to administer oaths pursuant to Section 2093  
(b) of the California Code of Civil Procedure, hereby  
certify that the witness in the foregoing deposition was  
by me duly sworn to testify the truth, the whole truth  
and nothing but the truth in the within-entitled cause;  
that said deposition was taken at the time and place  
therein stated; that the testimony of the said witness  
was reported by me and thereafter transcribed by me or  
under my direction into typewriting; that the foregoing  
is a full, complete and true record of said testimony;  
and that the witness was given an opportunity to read  
and correct said deposition and to subscribe the same.

I further certify that I am not of counsel or  
attorney for any of the parties in the foregoing  
deposition and caption named, or in any way interested  
in the outcome of the cause named in said caption.

DEPOSITION OFFICER

I hereby certify this copy  
is a true and exact  
copy of the original.

DATE: 5-12-05

Brian Dezzani  
DEPOSITION OFFICER